IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 113 OF 2007

PRAGNESH HARESH MEHTA & ORS. .. PETITIONERS

Versus

STATE OF MAHARASHTRA & ORS. .. RESPONDENTS

Mr. Amit Bajpai i/b Ashwin Ankhad & Associates for petitioners
Mr. M. S. Mhambre, APP
Mr. Nagi H.H. R-2

CORAM:-SMT. RANJANA DESAI &
ANOOP V. MOHTA, JJ.

DATED:-12/3/2007

P.C.

. The petitioners pray for quashing of C.R. No. 38 of 2006 pending before the Metropolitan Magistrate's 40th Court, Girgaon, Mumbai.

2. Petitioner 1 is the husband of respondent 2. Respondent 2 filed a complaint with the Malabar Hill Police Station, Mumbai, alleging offences under Section 498-A read with Section 34, 341, 376(1)(A), 377, 406 and 506 of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act against the petitioners.

3. The learned counsel for the petitioners and the 2nd respondent state that the petitioners and the 2nd respondent have amicably settled all the disputes between them. The 1st petitioner and the 2nd respondent's marriage has been dissolved by a decree of divorce passed by the Family Court at Mumbai, on 4/1/07. A copy of the operative part of the order passed by the Family Court is annexed to the petition at Exhibit-D and, we have perused the same.

4. Consent Terms have been filed by the parties in the Sessions Court at Mumbai. The consent terms are signed by the 1st petitioner and the 2nd respondent and their respective advocates. The consent terms are also signed by the parents of the 1st petitioner and the 2nd respondent. The consent term indicate that a sum of Rs.11 lakhs has been paid by the petitioners to the 2nd respondent.

5. The 1st petitioner and the 2nd respondent are present in the court. They have confirmed that the disputes between them have been amicably settled and they have no grievance against each other of any kind.

6. The learned counsel for the petitioners and the learned counsel for the 2nd respondent contended that in view of the settlement and in the light of the judgment of the Supreme Court in **B S Joshi & Ors. v. State of Haryana & Anr., 2003 ALL MR (Cri) 1162 (S.C.)** the proceedings in the trial court be quashed. Since the offences under Section 376(1)(A) and 377, 406 and 506 of IPC are alleged against the 1st petitoner, we had directed the learned APP to produce the investigation papers before us because great care and caution will have to be exercised while quashing such proceedings. The investigation papers indicate that in the complaint filed by the 2nd respondent only offence under Section 498A read with Section 34 of the IPC was alleged. The other offences i.e. Sections 376(1)(A), 377, 406 and 506 of the IPC were added only when the 2nd respondent gave her supplementary statement. There were no clear averments about these offences in the complaint.

7. We have also perused the medical report of the 2nd respondent. Prima facie it appears to us that it does not bear out the case under Section 377 of the IPC. Hence considering this and the fact that the parties have settled their disputes and they

have confirmed before us today that they have no grievance against each other, in the light of the judgment of the Supreme Court in **B. S. Joshi's case (supra)**, we are of the opinion that since the prosecution has become a lame prosecution it is in the interest of justice to quash the pending case. Hence the following order:

. The proceedings of C.R. No. 38 of 2006 pending before the Metropolitan Magistrate's 40th Court, Girgaon, Mumbai are quashed and set aside. The petition is disposed of in the aforestated terms.

. It is brought to our notice that learned advocate for 2nd respondent has not filed vakalatnama. The learned advocate for 2nd respondent states that he will file the vakalatnama during the course of the day.

JUDGE.

JUDGE.